



April 6, 2018

*direct phone: 515-242-2493*

*direct fax: 515-323-8593*

*email: amyjohnson@brownwinick.com*

**VIA HAND-DELIVERY**

Mr. Chuck Gipp, Director  
Iowa Department of Natural Resources  
Henry A. Wallace Building, 502 E. 9th Street  
Des Moines, IA 50319-0034

Re: *Appeal of DNR Notice of Intent to Issue Construction Permit for JPS Farms, LLC ("JPS")*  
*(Facility ID #69901)*

Dear Mr. Gipp:

This letter is in response to the Buena Vista County Board of Supervisors' ("Buena Vista County") Demand for Hearing submitted to the Iowa Department of Natural Resources ("DNR") by Buena Vista County Attorney David Wm. Patton on March 26, 2018 (the "Demand"). The purpose of the Demand is to appeal the decision of the DNR to issue a construction permit (the "Permit") to construct two new swine confinement finishing buildings located in the SE ¼ of the SW ¼ of Section 9, T92N, R37W, Scott Township, Buena Vista County, Iowa (the "JPS Finisher").

Buena Vista County argues in its Demand that DNR failed to appropriately weigh the proximity of the Jan Peterson acreage and intended residence (the "Acreage"), which is within one thousand (1,000) feet of the proposed JPS Finisher and as such the JPS Finisher should have received a failing Master Matrix score of four hundred (400). Master Matrix Item 1 allots forty-five (45) points to an applicant if the applicant exceeds the minimum separation distance requirements for a *residence*, hospital, nursing home or licensed or registered child care facility by five hundred one (501) – seven hundred fifty (750) feet. "Residence", for purposes of application to the Master Matrix is defined in 567 IAC 65.1, in pertinent part, as follows (emphasis added):

*"'Residence' means a house or other building, including all structures attached to the building, not owned by the owner of the animal feeding operation, which meets all of the following criteria at the location of the intended residence:*

- 1. Used as a place of habitation for humans on a permanent and frequent basis;*
- 2. Not readily mobile;*
- 3. Connected to a permanent source of electricity, a permanent private water supply or a public water supply system and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system.*
- 4. Assessed and taxed as real property."*

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The Acreage does not meet the definition of a residence because it does not meet all of the criteria set forth in 1-4 above, specifically, the Buildings (as defined herein) on the Acreage do not meet criterion 1 or 3. Per the Buena Vista County Assessor's website, there are two buildings located on the Acreage, one is described as a "steel utility building" and the second building is described as a "shed" (collectively, the "Buildings") which have a cumulative value of two thousand one hundred and ten dollars (\$2,110.00). The Buildings are not used as a place of habitation for humans on a permanent or more frequent basis because Ms. Paterson (the owner of the Acreage) lives in Minnesota (see Demand – Attachment C) and there is no evidence to indicate that Ms. Paterson leases the Acreage to others that use it as a place of habitation.

Further, Buena Vista County refers to the Buildings as "outbuildings" in its Demand, as does DNR in its Response to Buena Vista County Demand For Hearing. Finally, per the DNR's Response to Buena Vista County Demand For Hearing, "electric, septic, and water sources remain on site, but there is not a house or structure attached to those sources" meaning the Buildings do not meet the requirements of criterion 3 above. Because the Buildings do not meet the criteria set forth in 1 and 3 above, the Acreage does not meet the definition of a residence and no minimum separation distance applies. Therefore, the DNR appropriately awarded forty-five (45) points to JPS for Master Matrix Item 1 and the JPS Finisher was appropriately scored at four hundred forty-five (445) points.

It is worth noting that while the definition of residence references an intended residence, an intended residence is only a residence if it meets the criteria set forth in 1 through 4 above. It is our understanding that the "intended" reference in the rule was a compromise when the rules to implement a new statute were crafted to cover the rare situation in which a house was newly constructed but not yet occupied. This is clear from the reference to "intended" in the final paragraph of the rule which indicates that the burden would be on the owner of the "intended residence" to prove that the house is in fact a residence. Meaning, if a newly constructed house was within the applicable separation distance, the owner would be able to prove that the intended residence really is a residence 100% of the time if criteria 2 and 3 above are met.

For the above-stated reasons, we ask that the Environmental Protection Commission ("EPC") uphold DNR's decision to issue the Permit. Thank you for your consideration of these comments. Please provide this letter and the enclosed materials to the members of the EPC for their review and consideration prior to the hearing on these matters scheduled for the EPC's meeting to be held on April 17, 2018.

Very truly yours,

  
Amy A. Johnson

Mr. Chuck Gipp, Director

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cc: Kelli Book, Iowa Department of Natural Resources  
David Wm. Patton, Buena Vista County Attorney  
Keith Kratchmer, JPS Farms, LLC  
Michael R. Blaser, BrownWinick  
Jerah Sheets, Iowa Department of Natural Resources